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IN THE

Supreme Court of the United States

October Term, 1957

No. 665

A. H. BULL STEAMSHIP CO.,

Petitioner,

—against—

SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO,

Respondent.

A. H. BULL STEAMSHIP CO.,

Petitioner,

—against—

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, and INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO,

Respondents.

BRIEF FOR RESPONDENT, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO, IN OPPOSITION

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BRIEF FOR RESPONDENT, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO, IN OPPOSITION

Opinions Below

The Court of Appeals' opinion in petitioner's ("Bull") case against respondent ("SIU") has not as yet been officially reported. The opinion of the District Court is reported at 155 F. Supp. 739, is printed at pages A 59-A 66 of the Joint Appendix submitted below, which Appendix is a

part of the Court of Appeals record certified to this Court, and is also printed at pages 21-28 of Appendix A, annexed to the petition. The opinion of the Court of Appeals is printed at pages 37-48 of Appendix A, annexed to the petition.[1]

Jurisdiction

The Court of Appeals entered its judgment on November 21, 1957. Bull did not move for a rehearing.

This Court's jurisdiction to review the judgment of the Court of Appeals is invoked under 28 U. S. C., Section 1254(1). The judgment sought to be reviewed is wholly interlocutory. It reverses, on the basis of a unanimous Court of Appeals opinion, a temporary injunction issued by the District Court, enjoining, *pendente lite*, a strike and peaceful picketing in the course of a labor dispute.[2]

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[1] Hereinafter, in order to distinguish among the various appendices and the unprinted portion of the certified record, the following procedure will be followed: All references to pages in the Joint Appendix below will be preceded by the letters JA. All references to pages in the Appendix annexed to the petition will be preceded by the letters PA. All references to pages in the portion of the unprinted certified record will be preceded by the letters RA, to conform to the code utilized by the petitioner. All references to pages in the Appendix annexed to this brief in opposition will be preceded by the letters SA.

[2] SIU objects to the petitioner's combining the SIU case and the Officers' case. These are two separate cases, separately commenced, predicated on different contracts, and involving different issues totally unrelated to the issues here. The combining of the cases is both prejudicial and confusing, not to mention the difficulty involved in extracting from one continuous presentation those features applicable solely to the SIU case.

The mandate of the Court of Appeals was stayed, pending final disposition of the petition, by the order of Mr. Justice Harlan, entered on December 5, 1957. There is presently pending a motion before the Court, seeking a review and reversal of the said stay on the grounds, *inter alia*, that the stay may well destroy all of SIU's rights in the premises, notwithstanding the legality of its actions.

Question Presented

The parties hereto are the employer and union parties to a collective bargaining agreement. Pursuant to a wage reopening, negotiations were had and an impasse reached, whereupon a peaceful strike and picketing ensued. The agreement contains a no-strike clause, but the parties differ as to its scope and applicability. The employer brought suit under Sec. 301 of the Labor Management Relations Act of 1947 (29 U. S. C., Sec. 185), claiming the strike and picketing constituted a breach of the collective bargaining agreement, and seeking, *inter alia,* an injunction against the said breach. The District Court granted an injunction, *pendente lite,* which the Court of Appeals unanimously reversed.

The question is, does a Federal Court have jurisdiction, in such suit, to enjoin the said strike and picketing, notwithstanding the Norris-LaGuardia Act (29 U. S. C., Secs. 101, *et seq.*)?

Statutes Involved

The statutes involved are Sections 301(a) and 301(e), of the Labor Management Relations Act of 1947, as amended, 29 U. S. C., Sections 185(a) and (e), respectively; and Sections 1, 2, 4, 6, 7, 8, and 13 of the Norris-LaGuardia Act, 29 U. S. C., Sections 101, 102, 104, 106, 107, 108, and 113, respectively. All of these statutes will be found at PA 62-70, except that Section 301(e) of the Labor Management Relations Act and Sections 6 and 8 of the Norris-LaGuardia Act are printed at SA 1a.

Statement of the Case and Disposition Below

Bull is a deep-sea ship operator, engaged in intercoastal and foreign commerce. SIU is a labor organization, the

collective bargaining representative of the unlicensed seamen aboard Bull's vessels (JA 2). The latest agreement between the parties was signed on or about October 2, 1956, which agreement expires September 30, 1958.[3] SIU has had collective bargaining agreements with Bull since 1940 (JA 9), which agreements contained—as they still do—a grievance adjustment-arbitration clause (Article II, Section 3, of the Agreement, JA 22). By the terms thereof, if grievances cannot be settled aboard ship, they go to a Port Committee consisting of 3 representatives from both the Union and the company. Failing agreement on the disposition of the grievance, the Port Committee is required to select an arbitrator, whose decision shall be final and binding. Failing agreement on this selection, it is left to a United States District Judge (JA 22). This method of resolving grievances constitutes the only arbitration procedure set up in the entire agreement, apart from the patently inapplicable provisions in Article I, designed to resolve disagreements among members of the Seafarers Appeals Board, a joint management-Union Board granted jurisdiction, by contract, over the seniority and shipping rights of individual seamen. Thus, no arbitration procedure was either intended or established to resolve impasses on wage reopenings calculated to change the monetary provisions of the agreement. The no-strike clause referred to by Bull follows immediately after the clause setting out the grievance adjustment-arbitration procedure just referred to.

On June 17, 1957, notice was served by SIU that it desired to reopen for wage adjustments. As both the District

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[3] Petitioner has handed up a certified copy of this agreement as part of the certified record (Petition for Certiorari, page 4). Respondent has handed up to this Court nine additional copies of this agreement. Pertinent portions of this agreement, not set forth in Appendix C of the petition, are set forth at SA 1b.

Court (PA 22) and the Court of Appeals (PA 39) found, negotiations ensued, but were unsuccessful. As a result, SIU instituted a peaceful strike and picketing, on August 19, 1957 (PA 22; PA 39).

Shortly after the commencement of the strike and picketing, Bull began an action against SIU in the Supreme Court of the State of New York, County of Kings, in which both an injunction pendente lite and a permanent injunction against the strike and picketing were sought, on the basis that SIU had breached its contract by virtue of the said strike and picketing (JA 37-40). The motion for a temporary injunction was denied and the complaint dismissed, with leave to amend, on the authority of New York's "little Norris-LaGuardia Act", C. P. A. 876-a (JA 41-43). Bull then amended its complaint in an attempt to at least nominally comply with the requirements of the latter statute, and reinstituted its motion for a temporary injunction, which was then referred to an Official Referee (JA 57-58). This decision actually came down September 19, 1957. Without waiting for this decision, however, Bull instituted, on September 16, 1957 (JA 7), an action in the United States District Court for the Eastern District of New York, seeking precisely the same relief on precisely the same alleged breach, albeit now under Sec. 301(a) of the Labor Management Relations Act of 1947 [Sec. 185(a) of 29 U. S. C.], and adding a prayer for damages and a declaratory judgment (JA 2-6).

In its moving affidavit (JA 8-15), Bull sought to establish that the no-strike clause covered an impasse on reopening for wages (JA 9-10), so that a strike in connection therewith amounted to a breach, and that the negotiations, strike, and picketing were conducted in bad faith, the real motive thereof being pressure on its sole stockholder, American

Coal Shipping, Inc. ("ACS"), with which SIU has a separate dispute (JA 10-12). It did not challenge the peacefulness of the strike and picketing. SIU replied (JA 18-55) that the reopening clause—demanded some seven years after the first contract containing the no-strike clause was entered into—was never intended, or considered by anyone (including all the other companies with whom it had negotiated the same clause at about the same time) to be limited thereby upon impasse (JA 28), since it would thus amount to nothing more than the toothless "right" to talk, that both as a matter of fact and, indeed, as evidenced by the very juxtaposition of the no-strike clause, it was intended to apply solely to shipboard grievances for there, a *quid pro quo*—arbitration—had been agreed to (JA 23), and that the dispute, albeit indirectly affected by SIU's troubles with ACS, was confined solely to Bull (JA 24-26). Jurisdiction over the parties was not questioned. Dismissal, particularly of the injunctive aspects of the litigation, was sought, and a stay of all other proceedings was asked for, on the basis of the pending State Court action (JA 31-55).

The District Court, on papers and legal argument only, but without a hearing, found a breach of contract and granted an injunction, *pendente lite*, of "substantial scope" (PA 38), holding Norris-LaGuardia inapplicable in proceedings designed to enforce collective bargaining agreements (PA 24, JA 62), and citing this Court's decision in *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U. S. 448, as authorizing the issuance of an injunction in this case, although, with jurisdiction over the "person" of respondent not contested, why it needed *Lincoln Mills*, in the light of the claimed inapplicability of Norris-LaGuardia to contract enforcement proceedings, was not explained.

The District Court did not mention the State Court action, termed the charge of bad faith bargaining irrelevant "at this time" (PA 22), and disposed of the unbroken array of contrary precedents simply by ignoring them.

The Court of Appeals unanimously reversed. It expressly noted the said array of precedents (PA 40), and that the attempt to distinguish them on the grounds that none involved an express no-strike clause was a *non sequitur*, since all assumed the existence of a breach, no matter how more easily discernible by an express no-strike clause (PA 45). It emphasized that the *Lincoln Mills* case involved an arbitration agreement, the enforcement of which did not run afoul of the Norris-LaGuardia Act, while the present injunction falls squarely within the prohibited categories set out in Section 4 of that Act (PA 41-44). Thus, the Court reasoned, the issue was whether Norris-LaGuardia was impliedly repealed, *pro tanto*, by Sec. 301 of the Labor Management Relations Act, impliedly, because nowhere in Sec. 301 is there any express mention, much less repeal, of Norris-LaGuardia. In contradistinction to this, the Court noted that, where Congress contemplated the issuance of injunctions under the Labor Management Relations Act [29 U. S. C., Secs. 160(h), 178(b), and 186(e)], it expressly provided for the inapplicability of Norris-LaGuardia (PA 44). In this connection, it took special cognizance of the principle that accepted canons of construction do not favor the implied repeal of so significant an enactment as Norris-LaGuardia (PA 44-45). Finally, in exploring the history of Sec. 301, the Court found no evidence of an intent to repeal Norris-LaGuardia, *pro tanto*. Rather, it found compelling evidence (to be elaborated upon, *infra*) to the contrary (PA 45-47). On the foregoing basis, therefore, the Court of Appeals unanimously reversed the District Court.

In the light of this decision, the Court of Appeals did not decide the other questions raised, briefed, and argued on the appeal, such as:

(1) Whether there was, in fact, a breach of contract in the first place. The Court of Appeals did not in any way indicate acceptance of the finding of a breach but expressly noted disagreement between the parties as to the scope and applicability of the no-strike clause, stating it did not "decide this issue".

(2) Whether resolution of issues involving the legality of peaceful picketing in interstate commerce has been preempted to the National Labor Relations Board exclusively.

(3) Whether the charge of bad faith bargaining (reiterated here - see page 5 of the petition), with which the strike and picketing are inextricably enmeshed, did not require the District Court to deny the motion for a temporary injunction and dismiss the case, since that involved a charge against the Union falling squarely within Sec. 8(b) (3) of the National Labor Relations Act, as amended [29 U. S. C., Sec. 158(b)(3)], an issue to be resolved only by the National Labor Relations Board, certainly as to the injunctive aspects hereof, if not to all aspects [29 U. S. C., Sec. 160(a)]. It will be recalled that the charge of bad faith bargaining was dismissed by the District Court as irrelevant (PA 22, JA 60).

(4) The scope of the injunction and the claimed defect in the findings.

(5) The propriety of the issuance of the injunction, *pendente lite*, in the face of the existence of many issues of fact and of law.

Argument in Opposition to the Granting of a Writ in the SIU Case

Excluding what are claimed to be the issues arising out of the Officers' case, it appears that petitioner prays for the issuance of a writ in the SIU case on two grounds:

1. Questions of vital importance are raised.

2. The decision of the Court of Appeals is "believed erroneous and in conflict with applicable decisions of this Court."

The argument of SIU will not only negate the validity of these asserted grounds, but also, will present affirmative bases for denying the petition.

I. There Are No Conflicts in Circuits. Not a Single Precedent is Cited Contra. Conversely, an Enormous Array of Decisions, Amounting to Settled Law, Supports the Holding of the Court of Appeals, As Does the History of Sec. 301 of the Labor Management Relations Act.

A. The Cases.

Including the Court of Appeals decision below, the precedents are precisely *contra* to the District Court's holding, and settle the propositions that:

1. Even if the claim be established that a strike and picketing are in breach of contract, that factor does not remove the case from the category of labor disputes otherwise within Norris-LaGuardia, and

2. In a suit brought under Sec. 301 of the Labor Management Relations Act of 1947 (29 U. S. C., Sec. 185), a District Court, by virtue of Norris-LaGuardia, has no power thereunder to issue an injunction restraining a peaceful

strike or picketing arising out of a labor controversy, even if in breach of contract.

Alcoa S. S. Co. v. *McMahon*, D. C. S. D. N. Y., 81 F. Supp. 541, affirmed 2 Cir., 173 F. 2d 567, certiorari denied, 338 U. S. 821, 94 L. ed. 498;
W. L. Mead, Inc. v. *International Brotherhood of Teamsters*, 125 F. Supp. 331, affirmed 1 Cir., 217 F. 2d 6;
Sound Lumber Co. v. *Lumber and Sawmill Workers*, 122 F. Supp. 925.

We note that the District Courts, in both the *Mead* and *Alcoa* cases, were affirmed. Quite obviously, those Courts had also accepted the proposition above-mentioned.

See, also, *Local 205, etc.* v. *General Electric Company*, 233 F. 2d 85, affirmed (albeit by application of general federal law, and not the United States Arbitration Act, 61 Stat. 669, 9 U. S. C., Secs. 1 *et seq.*) 353 U. S. 547, 1 L. ed. 2d 1028, 77 S. Ct. —, advance, decided June 3, 1957, wherein the Court of Appeals for the First Circuit, per Magruder, *Ch. J.*, expressly reaffirmed and reiterated its holding in the *Mead* case, *supra*, as well as its adherence to the two propositions above set forth. However, in cases not involving strikes and picketing, but merely enforcement of agreements to arbitrate, it held Norris-LaGuardia inapposite. The District Court, 129 F. Supp. 665, had held that Norris-LaGuardia forbade injunctions even in such cases.

Also in support of these propositions are:

Assoc. Tel. Co. v. *Communications Workers*, 114 F. Supp. 334;
Castle & Cooke Terminals v. *Local 137*, 110 F. Supp. 247;
Local 937 v. *Royal Typewriter Co., Inc.*, 88 F. Supp. 669; and
Duris v. *Phelps Dodge*, 87 F. Supp. 229.

State Courts have similarly interpreted Sec. 301 of the Labor Management Relations Act to be limited, injunction-wise, by Norris-LaGuardia.

> *General Bldg. Contractors Ass'n.* v. *Local Unions No. 542, etc.*, 1952, 370 Pa. 73, 80, 87 A. 2d 250, 254 (Supreme Court of Pennsylvania, quoted at 114 F. Supp., p. 340);
>
> *McCarroll* v. *Los Angeles County District Council, etc.*, 315 P. 2d 322 (Supreme Court of California, decided Sept. 13, 1957, in an opinion discussing the *Lincoln Mills* case, and to which we shall have occasion again to refer, infra). Also reported at ¶70, 959, of 33 Labor Cases (Commerce Clearing House), pages 94, 900, et seq.

In *In Re Third Ave. Transit Corp.*, 192 F. 2d 971, the Court of Appeals for the Second Circuit unanimously held that even a reorganization court, under a duty to conserve the property in its custody, was bound by the Norris-LaGuardia Act and could not, on behalf of the trustees of the debtor, issue an injunction to restrain a strike on the part of the union representing the employees of the debtor, even if in a breach of contract.

The fact is that so vast is the deprivation of power occasioned by the Norris-LaGuardia Act that, even if the purpose of the strike be illegal, and actually so held, an injunction restraining the acts set out in Sec. 104 of Title 29, U. S. C., may still not issue.

Milk Wagon Drivers' Union v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, 85 L. ed. 63, 61 S. Ct. 122; *East Texas Motor Freight Lines* v. *International Brotherhood of Teamsters*, (CA 5th La.), 163 F. 2d 10; *Matson Nav. Co.* v. *S. I. U.*, 100 F. Supp. 730; cf. *Wilson & Co.* v. *Birl*, (CA 3d Pa.), 105 F. 2d 948.

We suggest that this array of precedents amounts to settled law, certainly so far as the District and Circuit Courts are concerned.

B. History of Sec. 301.

Most of the cases adopt (some, extremely effusively) the reasoning of Judge Rifkind in *Alcoa S.S. Co.* v. *McMahon*, 81 F. Supp. 541, affirmed 2 Cir., 173 F. 2d 567, cert. denied, 338 U. S. 821, in particular, his analysis of the legislative history of Sec. 301 of the Labor Management Relations Act of 1947 (29 U. S. C., Sec. 185), at page 543 of 81 F. Supp. The Court of Appeals, in the instant case, also went into this history in some detail (PA 45-47). In sum, that history reveals that the original Senate bill (S. 1126, 80th Cong., 1st Sess., 1947) contained a provision making violation of the collective bargaining agreement an unfair labor practice, enjoinable as such. This was dropped before its passage by the Senate. The House bill (H. R. 3020, 80th Cong., 1st Sess., 1947) contained a clause expressly withdrawing the Norris-LaGuardia Act from suits based on breach of contract. In conference, this provision was dropped. The House Conference Report (No. 510 on H. R. 3020, See Cong. Rec., 80th Cong., 1st Sess., June, 1947) noted this, and made it clear that insofar as Norris-LaGuardia was concerned, only the rule of agency therein (Sec. 6; 29 U. S. C., Sec. 106) was made inapplicable to suits under Sec. 301 of the Labor Management Relations Act, a change embodied in Sec. 301(e) [29 U. S. C., Sec. 185(e)]. This, coupled with the fact that Sec. 301 contains no reference whatever to Norris-LaGuardia, and the fact that, in other parts of the Labor Management Relations Act dealing with injunctions, the Norris-LaGuardia Act was expressly made inapplicable [e.g., 29 U. S. C., Secs.

160(h), 178(b), and 186(e); Sec. 10(h) as set forth in Sec. 101 of the Labor Management Relations Act of 1947, and Secs. 208(b) and 302(e) of that Act, respectively], inescapably compels the conclusion that Congress, in enacting Sec. 301, did not contemplate that section as a vehicle for the issuance of injunctions in contravention to the Norris-LaGuardia Act.

We are mindful, of course, that Bull nowhere claims a conflict in Circuits, at least not in the SIU case, nor does it attempt to show (nor could it) that the instant case is not a labor dispute (which the District Court, in effect, found anyway, while the Court of Appeals found it expressly—PA 22, 39-40). The foregoing discussion, therefore, is not intended to belabor points not challenged, but to counter the statement of Bull (pet., p. 12) that the decision below is "believed erroneous". We submit that, if precedents mean anything, the Court of Appeals could not possibly have reached any other decision. It is patently correct.

II. Petitioner's Assertion of Its Belief That the Court of Appeals' Decision Is In Conflict with the Principles of Prior Decisions of This Court has No Validity Whatever.

Bull claims a variance between the decision below and *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U. S. 448, 1 L. ed. 2d 972, 77 S. Ct. , decided June 3, 1957, advance; *Syres* v. *Oil Workers Union*, 350 U. S. 892, 100 L. ed. 785, 76 S. Ct. 152 (1955); *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. R. Co.*, 353 U. S. 30, 1 L. ed. 2d 622, 77 S. Ct. , advance, decided March 25, 1957; *Graham* v. *Brotherhood of Firemen*, 338 U. S. 232, 94 L. ed. 22 (1949); and *Virginian Railway Co.*

v. *System Federation No. 40*, 300 U. S. 515, 81 L. ed. 789 (1937).

Of all these cases, only *Lincoln Mills* was concerned with the relationship of Norris-LaGuardia to Sec. 301, albeit in an arbitration case. Only one, the *Chicago River* case, involved a strike and picketing. None involved the relationship of Sec. 301 to injunctions against peaceful strikes and picketing in labor disputes. These facts, plus counsel's oral argument in which it was, for all practical purposes, conceded that reliance was placed, almost exclusively on *Lincoln Mills*, undoubtedly explain why the Court of Appeals did not bother to discuss the others. Be that as it may, however, we take up these cases briefly.

The *Virginian*, *Graham*, and *Syres* cases, *supra*, involved neither strikes or picketing, nor a suit under Sec. 301 of the Labor Management Relations Act of 1947. In the former case, an employer had refused to bargain with a certified union under the Railway Labor Act (45 U. S. C., Secs. 151, *et seq.*, as amended at the time of the *Virginian* decision). In the *Graham* case and *Syres* case, an exclusive collective bargaining representative, bargaining under the authority of the Railway Labor Act and National Labor Relations Act, respectively, discriminated in the course thereof against members of the bargaining unit, on racial grounds. This Court, insofar as Norris-LaGuardia was therein concerned, adopted uniform reasoning with respect to all three cases. While adhering to the principle that positive mandates of later statutes must take precedence over the earlier and more general provisions of Norris-LaGuardia, it simultaneously refused to consider that Norris-LaGuardia was intended to inhibit the issuance of injunctive relief in such situations. That would be construing Norris-LaGuardia to defeat its own purposes, or, to use this Court's own termi-

nology, to "turn the blade inward." (*Graham* v. *Brotherhood of Firemen*, 338 U. S. 232, 237, 94 L. ed. 22, 28.)

In *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. R. Co.*, 353 U. S. 30, 1 L. ed. 2d 622, 77 S. Ct. , advance, decided March 25, 1957, still another Railway Labor Act case, this Court, by the Chief Justice, noted, in the opening paragraph (1 L. ed. 2d, at page 624, n. 2) that the relationships between labor and management in the railroad industry,

> "developed on a pattern different from other industries. The fundamental premises and principles of the Railway Labor Act are not the same as those which form the basis of the National Labor Relations Act, 49 Stat. 449, as amended, 29 U. S. C., Secs. 151, *et seq.* It is one of those differences which underlies the controversy in this case."

Thereupon, this Court determined that the Railway Labor Act specifically intended and provided for compulsory arbitration of "minor disputes" in place and in stead of the strikes that had hitherto plagued the industry in such situations, and upheld the injunction granted below. The right to strike having been taken away, in effect, by a later enactment with respect to which a strike is entirely incompatible, Norris-LaGuardia simply does not apply. On the other hand, the Court took pains to point out (1 L. ed. 2d, at page 630, n. 24) that, in "major dispute" cases, involving changes in an agreement—a situation precisely paralleling the instant controversy—there is no compulsory arbitration provided for in place of a strike. Accordingly, the Norris-LaGuardia Act prevents the issuance of an injunction in such cases, citing *Brotherhood of R. Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50, 88 L. ed. 534, 64 S. Ct. 413, 150 ALR 810 (1944).

The statement made at p. 13 of the petition, that *Chicago River* stands for the proposition that, under the Railway Labor Act, a federal court may enjoin a strike to effectuate the Congressional purpose of enforcing collective bargaining agreements in the railroad industry is, of course, incorrect. The injunction may issue only because the statute provides for compulsory arbitration of minor disputes by the National Railroad Adjustment Board.

Finally, *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U. S. 448, 1 L. ed. 2d 972, 77 S. Ct.——, advance, decided June 3, 1957, was concerned with the jurisdiction of a Federal Court to compel arbitration as provided for in a collective bargaining agreement. This Court found that Sec. 301 of the Labor Management Relations Act of 1947 confers substantive rights in accordance with substantive Federal law, which the

> "• • • courts must fashion from the policy of our national labor laws. • • • Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy." (1 L. ed. 2d, at pages 980-981).

Having formulated these standards of guidance with respect to the federal law which the courts must fashion from our national labor policy, this Court thereupon examined one of the major expressions of our national labor policy, the Norris-LaGuardia Act, and found, following the reasoning of Chief Judge Magruder in *Local 205* v. *General Electric, supra*, 233 F. 2d 85, affirmed, 353 U. S. 547, 1 L. ed. 2d 1028, 77 S. Ct. ——, advance, that the procedural requirements of Sec. 7 of the Norris-LaGuardia Act (29 U. S. C., Sec. 107) were inapposite vis-a-vis the enforce-

ment of agreements to arbitrate, in that the failure to arbitrate "was not a part and parcel of the abuses against which the Act was aimed", referring to the categories of forbidden injunctions set forth in Sec. 4 of the Act (29 U. S. C., Sec. 104). Moreover, Sec. 8 of that Act (29 U. S. C., Sec. 108) indicates a Congressional policy in favor of arbitration. Accordingly, this Court concluded that, by virtue of its inappositeness to agreements to arbitrate, the Norris-LaGuardia Act was no bar to the enforcement thereof by a suit under Sec. 301 of the Labor Management Relations Act of 1947 (29 U. S. C., Sec. 185).

This Court noted, at page 979 of 1 L. ed. 2d, that the "agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike."[4] The employer having obtained such an agreement, it is not surprising at all that this Court rendered ineffective the employer's attempt to use Norris-LaGuardia as a vehicle for avoiding its obligations to a union. But, how different that situation is from the instant one. Here, the injunction flies squarely in the face of Sec. 4 of the Norris-LaGuardia Act. It cannot possibly be reconciled with Sec. 301 except by holding that the latter section repeals Norris-LaGuardia, *pro tanto;* that Norris-LaGuardia's absolute prohibitions against the issuance of an injunction restraining a peaceful strike are, by virtue of Sec. 301, now to be qualified by the *caveat* that this is true only if the strike is not found, either preliminarily or after trial, to be in breach of contract. Nothing in the law, the history of Sec. 301, or the array of cases on the point can justify such a proposition.

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[4] In the instant case, of course, as has been pointed out, there is no agreement to arbitrate the impasse over monetary changes on wage reopening which occasioned the strike herein. Moreover, even in such a situation, Chief Judge Magruder stated, in *Local 205* v. *General Electric Co.*, 233 F. 2d 85, 93, that "the order to arbitrate could not be accompanied by an injunction against the strike."

This Court found that the Railway Labor Act accomplished just such a change in strikes by railway workers over minor disputes. (*Brotherhood of R. Trainmen* v. *Chicago River & Indiana R. R. Co., supra,* 353 U. S. 30, 1 L. ed. 2d 622, 77 S. Ct. ——, advance). But, significantly enough, this case was not even cited in *Lincoln Mills,* although it was decided on the very day *Lincoln Mills* was argued. Nor did the majority and concurring opinions even remotely imply a *pro tanto* repeal of Norris-LaGuardia. On the contrary, the emphasis which the Court placed on the inappositeness of Norris-LaGuardia with respect to enforcement of agreements to arbitrate compels, equally emphatically, the conclusion that where an injunction order —like the one here—flies in the face of Norris-LaGuardia, it must be stricken. And this is precisely the way the Court below and the California Supreme Court interpreted *Lincoln Mills.* [*McCarroll* v. *Los Angeles County District Council, etc.,* 315 P. 2d 322; 33 Labor Cases 94, 900 (published by CCH), at p. 94,907].

Petitioner has constantly reiterated the thesis that the Court below failed to reconcile or accommodate conflicting statutory enactments, that it has failed to fashion a body of law consistent both with Sec. 301 and the Norris-LaGuardia Act, in accordance with the decisions of this Court in *Lincoln Mills, Chicago River,* and all the other cases, *supra.* Presumably, Bull seeks to imply that these cases have promulgated some radically different judicial approach, which the Court of Appeals did not follow. Of course, reconciling and accommodating statutes is old business for the courts. They do that every day, just as, by their interpretations, they fashion law every day. The point is, the Court of Appeals did just that; it did reconcile, it did fashion, it did pay attention to our national labor

policy. And, in doing so, it found that Congress did not intend that Sec. 301 supplant Norris-LaGuardia to the extent that Sec. 4 of the latter Act is to be deemed non-existent in contract cases. What petitioner is really saying, therefore, is that it is unhappy with the results of the reconciliation and fashioning process, that it wants a right to relief forbidden by Norris-LaGuardia, despite disclaimer of the idea of repeal. But, in a "law fashioning" or "reconciliation" process, no court, not even this Court, can repeal a statute. That is the exclusive business of Congress, and it is this elementary principle which so patently distinguishes the decisions of this Court, erroneously claimed by petitioner to contravene the decision below.

III. The Instant Case Does Not Present an Important Question Which This Court Should Resolve.

The foregoing discussion demonstrates that the Courts have experienced no difficulty whatever in disposing of the issue presented. The claim of conflict with decisions of this Court is, plainly and simply, without any merit or validity whatever. Certiorari-wise, therefore, petitioner does not present an important question. In fact, in a very real sense, petitioner does not present a question at all, except insofar as petitioner chooses to phrase an already settled proposition and punctuate it with a question mark. We note, moreover, that this Court has already refused certiorari to review the precise issue herein presented, in a factual context much more pressing and definitively resolved than the instant one—a wildcat strike in breach of contract against the employer's exercise of rights declared by a judgment of the district court.

Alcoa S.S. Co. v. *McMahon,* 81 F. Supp. 541, affirmed (2 Cir.) 173 F. 2d 567, cert. den. 338 U. S. 821.

Manifestly, petitioner, in the *Alcoa* case, could not induce four Justices to consider the issue therein presented of sufficient importance to warrant the attention of this Court. Nothing in the present petition makes out a case for now attaching any greater importance to that self-same issue.

As for the alleged effect on Puerto Rican economy, the allegations, whatever their claimed materiality, are made on the incompetent testimony of counsel, without reflecting the availability of other sources of transportation, or what amount of Puerto Rican shipments go to other coasts. (See RA 91-93, response of SIU, filed Dec. 4, 1957, to Bull's stay application to this Court, and SIU's motion to reverse the said stay, filed Dec. 12, 1957.) Be that as it may, however, the decision below is but the latest of a series which effectuate the really pertinent decision—that is, the decision to affect the whole American economy (including that of Puerto Rico), taken 25 years ago by the enactment of the Norris-LaGuardia Act.

IV. The Decision Sought to be Reviewed is Wholly Interlocutory. The Petition Makes No Showing Sufficient to Warrant the Grant of Certiorari In This Case.

Textbooks indicate that this Court will not ordinarily grant certiorari to review a non-final judgment. (Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, 1951 Edition, Matthew Bender & Co., at page 233; Stern and Gressman, Supreme Court Practice, 1954 Edition, BNA Incorporated, pages 130-131). The cases cited by Bull are clearly distinguishable, merely evidence the fact that exceptions do occur, and certainly do not amount to precedents. Whether certiorari is granted depends wholly on whether petitioner makes a case for it.

Petitioner's case for certiorari at this interlocutory stage rests on its claim that such a grant would be "in the public interest", by virtue of

1. The "unquestionable impact" of the Court of Appeals' decision below.

2. The impact on future conduct of this litigation.

As to 1, the decision below has no more impact than those in the *Alcoa* case, the *Mead* case, and the *Local 205* case, *supra*. It merely confirms settled law and states no novel proposition.

As to 2, we have noted before that the decision leaves unaffected Bull's claim for damages[6], or its right (if there is a breach) to discharge those of its employees who participated in the breach, and hire others. (*NLRB* v. *Sands Mfg. Co.*, 306 U. S. 332, 83 L. ed. 682). Indeed, the contract itself provides for Bull's obtaining personnel from any source when not supplied by the Union for any reason (SA 1b). Moreover, it will be recalled that it has not been established that SIU is in breach of contract, so that notwithstanding extended consideration by this Court on certiorari, or even on the merits, a trial might well establish that Bull had no right to any relief in the first place. (See *NLRB* v. *Lion Oil Co.*, 352 U. S. 282, 1 L. ed. 2d 331, 77 S. Ct. 330, advance, decided Jan. 22, 1957.) Also, despite argument and briefing, the Court of Appeals did not reach the question as to whether the charge of bad faith bargaining and the strike and picketing inextricably enmeshed therewith raised issues, the decision on which was pre-empted exclusively to the National Labor Relations Board. The same applies to the question as to whether peaceful picketing (even if in breach of contract) could be enjoined by any tribunal other

[6] See later decisions in the *Mead* case, granting a money judgment for $359,000.00, 129 F. Supp. 313, affirmed 230 F. 2d 576, certiorari dismissed, 352 U. S. 802, 1 L. ed. 2d 37, 77 S. Ct. 21.

than the National Labor Relations Board, in the light of *Garner* v. *Teamsters*, 346 U. S. 485, 98 L. ed. 228, 74 S. Ct. 161; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 99 L. ed. 546, 75 S. Ct. 480, and, most significantly, *Youngdahl* v. *Rainfair, Inc.*, decided by this Court Dec. 9, 1957 (No. 11, October Term, 1957), 355 U. S. —, 2 L. ed. 2d 151, 78 S. Ct. —, advance. Thus, there is present the additional consideration that it is not at all certain that a purely academic question is not being presented to this Court, much less one dispositive of the question whether it is possible, in any event, for respondent to be enjoined in this lawsuit.

We are constrained to emphasize that considerations beyond those normally involved in granting or denying petitions are present here. As previously noted, the injunction issued by the District Court, notwithstanding its unanimous reversal by the Court of Appeals, was, in effect, continued by Mr. Justice Harlan's stay until final disposition of the petition. A motion to reverse this stay has not yet been acted upon. In these circumstances, a grant of certiorari inevitably entails at worst, the destruction, and, at best, a substantial nullification, of SIU's reopening rights, since the contract expires September 30, 1958 (See comments of Mr. Justice Douglas in *Amalgamated Clothing Workers* v. *Richman Bros.*, 348 U. S. 511, 99 L. ed. 600, 75 S. Ct. 452, 1955, at p. 526 of 348 U. S.). Finally, we may reiterate here that Bull's forum shopping is such that, even after all the myriad issues herein involved are disposed of by the Federal Courts, the litigation may commence all over again, for Bull has made no secret of its intention to go back to its presently dormant State Court action, if it fails in the Federal Courts (See comments of Mr. Justice Frankfurter in the *Amalgamated* case, *supra*, at p. 519 of 348 U.S.).

In the light of all this, we urge that Bull has not made out a case meriting the grant of certiorari—certainly not at this interlocutory stage.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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January 3, 1958.

APPENDIX A

Statutory Provisions Not Included in Appendix B of Petition

I. Labor Management Relations Act, 1947, Section 301(e), 29 U. S. C., Section 185(e).

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

II. Norris-LaGuardia Act, Sections 6 and 8; 29 U. S. C., Sections 106 and 108, Respectively.

§106. *Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents*

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

§108. *Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief*

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

APPENDIX B

Relevant Provisions of Collective Bargaining Agreement with SIU Not Included In Appendix C of Petition

Article I

Section 2. * * * If, for any reason, the Union does not furnish the Company with capable, competent and physically fit persons when and where they are required, and of the ratings needed to fill such vacancies, in ample time to prevent any delay in the scheduled departure of any vessel covered by this agreement, the Company may then obtain members of the Unlicensed Personnel from any available source, in which case the Union shall be notified.

Article II

Section 3. Port Committee. For the adjustment of any grievances arising in connection with performance of this agreement which cannot be satisfactorily adjusted on board the vessel there shall be established a Port Committee at the port where articles are terminated. The Port Committee shall consist of 3 representatives from the Union and 3 representatives from the Company, and it shall be the duty of the Port Committee to meet within 24 hours, Saturdays, Sundays and Holidays excluded. In the event the Port Committee cannot agree they shall select an impartial arbitrator whose decision shall be final and binding. In the event the Port Committee cannot agree on the selection of an impartial arbitrator, then a judge of the District Federal Court shall appoint an impartial arbitrator whose decision shall be final and binding. Expenses of the arbitrator shall be paid by the party whom the arbitrator rules against in the decision.